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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

NO. 551

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## PETITIONER'S REPLY BRIEF

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PAUL GINSBURG
Counsel for Petitioner

Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

SMITH BROS. CO., INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

NO. 551

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## PETITIONER'S REPLY BRIEF

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The Brief of Respondents in Opposition to Petition for Writ of Certiorari could not comply with paragraph 1 of Rule 24 of this Court, and it failed to comply therewith, because it does not disclose "any matter or ground why the cause should not be reviewed by this Court".

The respondents' repeated asseveration that your petitioner failed to perfect the appeal is refuted by the record which shows that the appeal was indeed perfected in every respect. Respondents' futile claim

could only be the result of their misapprehension and confusion on the difference between perfecting and prosecuting an appeal. Since the appeal was perfected they could argue only that the appeal was not prosecuted by full compliance with Rulee 17(6) of the Court of Appeals; but such argument would be untenable and insupportable because compliance with Rule 17(6) is suspended pending the disposition of the preliminary motions then before that Court, and the Clerk of the Court of Appeals agreed with your petitioner on that point. It necessarily follows, because the Order of dismissal failed to contain any ground therefor and it was not accompanied by an Opinion, that the respondents' assumption (p. 4) that "The Court of Appeals properly exercised its discretion in dismissing petitioner's appeal for failure to comply with Rule 17(6)" is wholly without foundation. On the contrary, the only logical explanation for the dismissal would be that it was grounded on respondents' misrepresentation in the motion to dismiss that "Appellant has not perfected his appeal by filing and serving a statement of the points upon which he intends to rely and a designation of the portions of the record material to the consideration of the appeal as required by Rules 75(a) and 75(d) Federal Rules of Civil Procedure"; and that the Court of Appeals accepted their misrepresentation as true instead of relying upon the record. Had the Court of Appeals examined the reecord, the Court would have found that your petitioner had fully complied with F.R.C.P. Rule 75 in perfecting the appeal, and that the appeal was entirely meritorious. Thus their argument (p. 4) that "None of the matters raised in Questions 1-5 of petitioner's brief (pages 2-4) were ever properly

presented to the Court of Appeals" must fail, because all of those matters fully support petitioner's point that the appeal was wholly meritorious and that, therefore, the dismissal constituted an abuse of discretion. Assuming *arguendo* that the respondents really had a technical ground for dismissal of the appeal, the dismissal still would constitute an abuse of discretion.

Similarly their argument (p. 5) that "Furthermore, the matters urged in support of the instant petition have previously been urged unsuccessfully upon this Court in *Ginsburg v. Gourley*, No. 663, October Term, 1959" should be taken *cum grano salis* not only because it is inaccurate, as the only issue therein was the respondents' fraud upon the Court; but also because this Court has repeatedly pronounced that the denial of certiorari does not imply approval of the judgment sought to be reviewed or of its supporting opinion.

Evidently the respondents are still trying to dodge the underlying issue of fraud presented herein, and they are advocating that this Court do likewise. That could be one reason why they opened their Statement of the Case (p. 2) with the unfounded and puerile charge that "petitioner's Statement of the Case is almost entirely inaccurate", without any detailing or specifying of which statements, if any, are inaccurate and which are admittedly accurate.

The cases cited by respondents in their Argument 2 (p. 5) are not authority for their proposition and do not legally support the dismissal of the appeal. Their reprehensible assertion (p. 5) that your petitioner "has already prolonged the litigation in an unwarranted manner" is a deliberate misrepresentation to this Honor-

able Court of the various prior proceedings forced upon your petitioner by them in order to vex, hinder and delay your petitioner in securing justice through cleansing of their frauds. Furthermore, their representation (p. 5) that "petitioner had been notified by the Court of Appeals to file immediately his statement of points and designation of record" is untrue. Your petitioner was never so notified by the Court.

Conspicuous by absence from the respondents' brief is any legal opposition whatever to the wealth of authorities cited by your petitioner in support of his Reasons Relied on for the Allowance of the Writ. Furthermore, it is significant that their brief fails to submit any denial of their fraud.

## CONCLUSION

In view of the record fraud herein and the resulting injustice to your petitioner, the least relief to which he is entitled would be this Honorable Court's vacating of the judgments of the Court of Appeals sought to be reviewed; then remanding the cause to the Arizona District Court with instructions to retransfer the cause to the Pennsylvania District Court for trial.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner
Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

Dated: 30 December 1960.

IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1960**

**NO. 551**

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PAUL GINSBURG
Counsel for Petitioner

Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1960**

**NO. 551**

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The petitioner, Paul Ginsburg, respectfully moves this Honorable Court to vacate its Order entered on January 9, 1961, denying his petition for writ of certiorari (*United States of America, Petitioner, v. The Ohio Power Company*, 353 U. S. 98, 1957); then to grant the petition for writ of certiorari and vacate the Orders of the Court of Appeals sought to be reviewed and thereupon to reverse the Orders and Judgment of the District Court, and remand (28 U. S. C., section 2106) the above entitled case to the United States District Court for

the District of Arizona at Phoenix, with directions to retransfer the cause to the United States District Court for the Western District of Pennsylvania for further proceedings (*United States of America, Petitioner, v. Shotwell Manufacturing Company, et al.*, 355 U. S. 233, 1957, citing and relying upon *Communist Party v. Subversive Activities Control Board*, 351 U. S. 115, and *Mesarosh v. United States*, 352 U. S. 1); and in support hereof avers:

1. On January 9, 1961, upon consideration of the Petition for Writ of Certiorari, the Brief of Respondents in Opposition thereto, and Petitioner's Reply Brief, this Honorable Court denied the petition.

2. Since the said denial of certiorari herein, there have been filed on behalf of your petitioner in the United States District Court for the Western District of Pennsylvania at Civil Action No. 11521 (wherein the instant proceeding was commenced): a Motion Under F. R. C. P. Rule 15 (b, c) for Leave to File Amended Answer to Motion for Change of Venue (with the Amended Answer and Affidavit in Support thereof attached), to which an Answer has been filed; and a Motion Under F. R. C. P. Rule 60 (b) to Open and Vacate Orders of Court.

3. The said Amended Answer to Motion for Change of Venue conforms to the evidence and testimony adduced upon trial of the cause in the Arizona District Court at Phoenix, making it evident that the Motion for Change of Venue fails to comply with any of the requirements of 28 U. S. C., section 1404(a), and that the essential allegations therein are fraudulent misrep-

resentations, thus requiring dismissal of the Motion for Change of Venue.

4. The said motion under Rule 60(b) seeks to open and vacate the Orders of Court transferring the cause from the Western Pennsylvania District to the Arizona District for the reasons that the Orders were procured and entered through fraud upon the Court as well as upon your petitioner; the Orders were obtained and entered through misconduct of petitioner's adversaries; the said fraud and misconduct were after discovered at the trial, as is evidenced in the Official Transcript of the Proceedings in the Arizona District Court at Phoenix; it is not equitable or legal that said Orders of Court should have any effect, and petitioner should be relieved from the operation of said Orders.

5. The issues raised in the said motions have never been ruled upon or adjudicated on the merits by any Court. The only apparent justification for this Court's refusal to review and adjudicate such serious issues (including the record fraud), and then resolve the conflicts entered thereby, may have been the absence of a record basis for review which petitioner presently seeks to establish in the Western Pennsylvania District Court, the only lower court of competent jurisdiction. Otherwise, there remain of record herein undenied, unchallenged and unreviewed assertions of fraud, illegal transfer of the cause, denials of due process of law, illegal dismissal of appeal, affirmative judgments in an interpleader proceeding, unruly conflicts, *et cetera,* all of which may lead to unwarranted implications that such serious situations have been overlooked by this Honorable Court. Therefore, having denied the petition for

writ of certiorari, this Honorable Court should grant this Motion to Remand.

6. Your petitioner is quite aware of the fact that this Supreme Court is only a Court of review, and is not a Court of justice; and that under paragraph 1 of Rule 19 "A review on writ of certiorari is not a matter of right but of sound judicial discretion, and will be granted only where there are special and important reasons therefor". Nobody learned in the law, however, would sincerely deny that the character of petitioner's ten Reasons Relied On For The Allowance Of The Writ is such as to require an exercise of discretion in favor of review; and that an exercise of discretion against review is neither sound nor judicial; unless, of course, the cause is not yet ripe for review by reason of the lack of record basis which will be corrected through the granting of the instant Motion to Remand. A meticulous regard for the honor of the fair administration of justice in the Federal System, therefore, requires the granting of this motion.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner
Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

Dated: 24 January 1961.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

NO. 551

PAUL GINSBURG, Petitioner,

v.

ROXY KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## AMENDMENT TO MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PAUL GINSBURG
Counsel for Petitioner

Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

SMITH-BRETT PRINTING CO., INC., LAW PRINTERS, 414-438 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1960**

**NO. 551**

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## AMENDMENT TO MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The petitioner, Paul Ginsburg, hereby files Amendment to Motion to Remand pending herein, by adding the following averments to those already contained in the Motion to Remand as originally filed:

7. On February 9, 1961 petitioner herein appeared in open Court before Hon. Wallace S. Gourley, Chief Judge of the United States District Court for the Western District of Pennsylvania, and requested the jurist to make application to the Clerk of this Honorable Court

for the original records on file herein, so that proper consideration and disposition could be had of the motions pending before Judge Gourley, which are to be heard on February 27, 1961.

8. The said motions pending before Judge Gourley are described in paragraphs 2, 3, 4 and 5 of the instant Motion to Remand, and they should be adjudicated on the merits.

9. Your petitioner then stated to Judge Gourley that he was informed the Clerk of this Honorable Court would honor such an application under paragraph 2 of Rule 1 of the Rules of this Court. The jurist, nevertheless, firmly and positively refused to make an application for the records, his stated reason being that he had already adjudicated all of the issues involved.

10. Your petitioner then reminded Judge Gourley that the issues involved in said motions relate to the respondents' fraud upon the Court as well as upon petitioner; and that those issues have never been adjudicated by him or by any other Court, as averred in the opening sentence of paragraph 5 of the instant Motion to Remand.

11. Petitioner specifically reminded Judge Gourley, without avail, that he had refused to adjudicate those issues because he was without jurisdiction, which decision necessitated proceedings in this Honorable Court on certiorari at No. 663 October Term, 1959, in the case of Paul Ginsburg, petitioner, v. Hon. Wallace S. Gourley, respondent, which proceedings are incorporated herein by reference thereto. Particular reference in that proceeding is made to the Appendix where Judge Gourley stated (p. 3), "I cannot help conclude that the United

States District Court for the Western District of Pennsylvania is without jurisdiction"; and where Judge Gourley concluded his Order (p. 4), "refused for the reason this Court has no jurisdiction."

12. Although the Motion to Remand is self-supporting, this amendment thereto makes it manifest that the motion should be granted *a fortiori*, because the most usual and customary basis for remand is to require further proceedings in the Court where the action was commenced so that all of the issues be considered and adjudicated on the merits, thus providing a record basis for review, if necessary.

13. If this Honorable Court is unable to review the above entitled cause (and the undenied, unadjudicated record frauds therein) for want of a record adjudication thereon, then it would seem that such record should be provided by District Judge Gourley. Otherwise, your petitioner will have been deprived of his guaranteed right to a day in Court in all Courts, not only in the lower Courts but also in this reviewing Court.

14. In the interest of justice, this cause should be remanded so that beyond question the learned District Judge will have the privilege of jurisdiction and the concomitant duty of adjudication.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner
Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

Dated: 9 February 1961.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

NO. 551

PAUL GINSBURG, Petitioner

v.

WILLIAM GINSBURG and JOHN PAUL GINSBURG, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents

## PETITION FOR REHEARING

to Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PAUL GINSBURG
Counsel for Petitioner

[illegible] Street
19 Pennsylvania

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

NO. 551

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## PETITION FOR REHEARING

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The petition for rehearing of Paul Ginsburg, petitioner, respectfully represents:

1. On January 9, 1961, upon consideration of the Petition for Writ of Certiorari, the Brief of Respondents in Opposition thereto, and Petitioner's Reply Brief, this Honorable Court denied the petition.

2. On January 25, 1961, petitioner lodged herein a Motion to Remand which, together with his Amendment to Motion to Remand lodged herein this 11th day of February, 1961, will be submitted to this Honorable Court on or about February 15, 1961, for an adjudication, which will be rendered on or after February 20, 1961.

3. On January 26, 1961, petitioner's Application for Extension of Time Within Which to File Petition for Rehearing was presented to Mr. Chief Justice Warren (in the absence of Mr. Justice Douglas) who, on January 30, 1961, entered an Order extending the time for ten days to and including February 13th, instead of for sixty days as requested. The purpose of said application was to allow a reasonable time for disposition of said Motion to Remand (the granting of which would obviate the need for this Petition for Rehearing) and then for preparation of a petition for rehearing, if necessary.

4. On February 4, 1961, petitioner's Application for Further Extension of Time Within Which to File Petition for Rehearing was lodged herein and presented to Mr. Chief Justice Warren (again in the absence of Mr. Justice Douglas) who, on February 8, 1961, denied it. That application showed that this Petition for Rehearing would have to be filed before there could possibly be an adjudication of the Motion to Remand, and requested an additional thirty days.

5. The denied petition for writ of certiorari *sought review of issues raised under the Constitution and laws of the United States rather than questions of fact;* and review of decisions which entered conflicts with decisions of the instant and other Circuits as well as with applicable decisions of this Court, in a cause of public importance.

6. The petitioner's Motion to Remand, as amended, shows that the only justification for denial of certiorari herein which petitioner can ascertain in the absence of an Opinion of the Court, is that the cause is not yet

ripe for review by reason of the lack of record basis which will be corrected through remand

7. Having denied certiorari, should this Honorable Court also refuse to remand, then your petitioner can only add a plea herein that he has never had a chance, in spite of the fact that under the law he is entitled to two chances,—one in the trial Court and another in the Court of Appeals.

8. In the case of *Dick v. New York Life Insurance Co.*, 359 U. S. 437, both the Opinion of the Court by Mr. Chief Justice Warren and the dissenting Opinion by Mr. Justice Frankfurter support the point that certiorari should be granted herein. Therein the Opinion of the Court covering ten pages (437-447), reversing the judgment sought to be reviewed, simply involved the question of whether the Eighth Circuit properly held that it was error to submit to a jury's determination whether an insured died as a result of suicide or accident. There were no important issues, as herein, like fraud, illegal transfer to a District where the action could not have been brought, deprivations of due process of law, adjudications in advance of the right to be heard and preventing records for review, entry of affirmative judgment in an interpleader action, and conflicts to be resolved.

9. The said dissenting Opinion by Mr. Justice Frankfurter, who would have affirmed, was even longer (447-463) than the Opinion of the Court, and contained a very interesting history of the Evarts Act and the "Judges' Bill". According to a pronouncement by Mr. Chief Justice Taft (452), a litigant is entitled to two chances,—one in the District Court and another in the

Court of Appeals. In the instant Case, petitioner never had a first chance in any lower Court on the issue of fraud; and he never had a second chance in a Court of Appeals on the issue of erroneous transfer of the cause. When that pronouncement added that the Supreme Court's function is to preserve uniformity of decision among the intermediate courts of appeal, it is respectfully submitted that upon this rehearing, certiorari should be granted so that the conflicts entered herein will be resolved.

10. The said dissenting Opinion also contained an important pronouncement (455) by Mr. Chief Justice Hughes, which supports the right to certiorari herein because the questions presented are not questions of fact, but are questions of law.

11. In view of the foregoing, it is respectfully submitted that upon this rehearing, the Court will exercise a legal discretion which is both sound and judicial, and thus grant certiorari.

Wherefore, your petitioner prays that this Honorable Court grant a rehearing.

PAUL GINSBURG,
Counsel for Petitioner.

Dated: 11 February 1961.

**CERTIFICATE OF COUNSEL**

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay; and that it is restricted to the grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG,
Counsel for Petitioner.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

NO. 551

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## PETITION FOR REHEARING SUR MOTION TO REMAND

PAUL GINSBURG
Counsel for Petitioner

Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

SMITH BROS. CO. INC., LAW PRINTERS, 434-438 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1960**

**NO. 551**

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## PETITION FOR REHEARING SUR MOTION TO REMAND

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The petition for rehearing *sur* motion to remand, pursuant to paragraph 1 of Rule 58, of petitioner, Paul Ginsburg, respectfully represents:

1. On February 27, 1961, this Honorable Court entered an Order denying petitioner's Motion to Remand.

2. The said Motion to Remand authoritatively showed that the above entitled action should be remanded to the United States District Court for the District of Arizona at Phoenix, with directions to retransfer the cause to the United States District Court for the Western District of Pennsylvania for further proceedings.

3. The further proceedings pending in the Western Pennsylvannia District Court at Civil Action No. 11, 521 are petitioner's Motion under F.R.C.P. Rule 15 (b, c) for

Leave to File Amended Answer to Motion for Change of Venue (with the Amended Answer and Affidavit in Support thereof attached), to which an Answer has been filed as well as a Reply to the Answer; and petitioner's unanswered and undenied Motion under F.R.C.P. Rule 60 (b) to Open and Vacate Orders of Court, for having been procured through misconduct of petitioner's adversaries and through fraud upon the Court as well as upon petitioner.

4. The issues raised in the said motions under Rule 15 (b, c) and Rule 60 (b) have never been ruled upon or adjudicated on the merits by any lower Court or by this Court. It is respectfully submitted that the issue of fraud must be adjudicated, to the end that the fraud will be cleansed and purged; because no Court should house a single fraud.

5. Petitioner's Amendment to Motion to Remand showed that Chief Judge Gourley of the Western Pennsylvania District refused to make application to the Clerk of this Court for the records in this case pursuant to paragraph 2 of Rule 1 of this Court, for the asserted reason that he had already adjudicated all of the issues involved. It was also pointed out therein, nevertheless, that Judge Gourley ***had never adjudicated any of said issues on the merits, and had expressly refused to do so*** because he thought he was without jurisdiction, as stated in the jurist's own Opinion of record in this Court at No. 663 October Term, 1959, in the case of Paul Ginsburg, Petitioner, v. Hon. Wallace S. Gourley, Respondent.

6. The Chief Justice and the Associate Justices of this Court should not preclude petitioner from prosecuting the underlying issue of fraud herein where it was originally perpetrated and is unwanted, simply because

they have decided not to review the questions presented and adjudicate the issues involved. It should be pointed out here that the judicially obnoxious judgments of Hon. Dave W. Ling at Phoenix, unsuccessfully sought to be reviewed herein, are currently before the Judiciary Committee of the House of Representatives of the United States in connection with petitioner's Request for Impeachment Proceedings against Judge Ling for the reason that the jurist's actions of misconduct violated the Constitution and laws of the United States.

7. The Honorable, Harlan Fiske Stone, late of this Court, stated, "I have no patience with the complaint that criticism of judicial action involves any lack of respect for the courts. When the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action and fearless comment upon it."

Wherefore, your petitioner prays that this Honorable Court grant a rehearing.

PAUL GINSBURG,
Counsel for Petitioner.

Dated: 2 March 1961

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**CERTIFICATE OF COUNSEL**

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

PAUL GINSBURG,
Counsel for Petitioner.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

NO. 551

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## MOTION FOR LEAVE TO FILE THE ANNEXED SECOND PETITION FOR REHEARING AND APPENDIX

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PAUL GINSBURG
Counsel for Petitioner

Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

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IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1960**

**NO. 551**

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## MOTION FOR LEAVE TO FILE THE ANNEXED SECOND PETITION FOR REHEARING AND APPENDIX

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The petitioner, Paul Ginsburg, respectfully moves this Honorable Court to enter an Order granting him leave to file the annexed second Petition for Rehearing and Appendix, pursuant to the authority of *United States of America, Petitioner, v. The Ohio Power Company*, 353 U.S. 98, 1957, and in the interest of justice.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner
Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

## SECOND PETITION FOR REHEARING

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The second petition for rehearing of Paul Ginsburg, petitioner, respectfully represents:

1. On February 27, 1961, the Court entered an Order denying the first Petition for Rehearing.

2. It was then a matter of record herein, through petitioner's Motion to Remand, that after the denial of certiorari and before the denial of rehearing there had been filed on behalf of your petitioner in the United States District Court for the Western District of Pennsylvania at Civil Action No. 11521 (wherein the instant proceeding was commenced): a Motion Under F.R.C.P. Rule 15(b, c) for Leave to File Amended Answer to Motion for Change of Venue (with the Amended Answer and Affidavit in Support thereof attached), to which an Answer was filed; and a Motion Under F.R.C.P. Rule 60(b) to Open and Vacate Orders of Court.

3. The averments of said denied Motion to Remand explained the purposes of the Motions pending below, and then showed that the issues raised therein have never been ruled upon or adjudicated on the merits by any Court. As a result, there remain of record herein undenied, unchallenged and unreviewed assertions of fraud, illegal transfer of the cause, denials of due process of law, illegal dismissal of appeal, affirmative judgments in an interpleader proceeding, unruly conflicts, *et cetera*.

4. It is respectfully submitted in view of the authorities heretofore cited in support of certiorari, that

the only justification for denial of the first Petition for Rehearing could be the pendency of said Motions below which would entitle your petitioner to an adjudication of some of the issues sought to be reviewed herein. *Chief Disrict Judge Wallace S. Gourley of said Western Pennsylvania District has, however, since the first denial of rehearing, entered an Order denying the said motions, which Order dated March 6th, 1961, is appended hereto.*

5. The learned District Court Judge's refusal of the motions is "for the reason that said proceeding is pending in the Supreme Court of the United States and that this Court is without jurisdiction to entertain said motion . . .".

6. It is obvious that when the District Court refuses to entertain the motions because the proceeding is pending in the Supreme Court; and the Supreme Court refuses certiorari because the motions are pending in the District Court; then your trapped petitioner suffers a total deprivation of his *right to a day in Court.*

7. The Constitutional guaranties of due process of law, therefore, require that this Honorable Court retain jurisdiction over the above entitled cause and grant this second Petition for Rehearing.

PAUL GINSBURG,
Counsel for Petitioner

**CERTIFICATE OF COUNSEL**

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay; and that it is restricted to the grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG,
Counsel for Petitioner.

# APPENDIX

## IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a corporation, Plaintiff,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, MINORS, BY LOYAL H. GREGG, GUARDIAN AD LITEM, and PAUL GINSBURG, Defendants.

Civil Action No. 11521

### Order

AND NOW, this 6th day of March, 1961, upon oral argument, IT IS ORDERED AND DECREED that motion of Paul Ginsburg, defendant, to file Amended Answer to Motion for Change of Venue, pursuant to Rules 15(b) and 15(c) of the Federal Rules of Civil Procedure, will be and hereby is refused for the reason that said proceeding is pending in the Supreme Court of the United States and that this court is without jurisdiction to entertain said motion, the reasons therefore being set forth with greater particularity in the oral opinion of this court of February 27, 1961.

IT IS FURTHER ORDERED AND DECREED that motion of Paul Ginsburg, defendant, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, to open and vacate the Order entered by this court on May 9, 1957, transferring the above proceeding to the United States District Court for the District of Arizona, will be and it hereby is refused for the reason that said proceeding is pending in the Supreme Court of the United States and that this Court is without jurisdiction to entertain said

motion, the reasons therefore being set forth with greater particularity in the oral opinion of the Court of February 27, 1961.

FINALLY, IT IS ORDERED that in the event an appeal is taken from the entry of this order, proceeding of February 27, 1961 shall be transcribed at the expense of Paul Ginsburg, defendant and moving party.

/s/ WALLACE S. GOURLEY, CDJ
Chief Judge

cc: PAUL GINSBURG, ESQ.
LOYAL H. GREGG, ESQ.
EUGENE B. STRASSBURGER, JR., ESQ.

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IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1960**

**NO. 551**

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## MOTION TO VACATE ORDER DENYING CERTIORARI AND FOR LEAVE TO FILE THE ANNEXED AMENDMENT TO PETITION FOR WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1960**

**NO. 551**

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## MOTION TO VACATE ORDER DENYING CERTIORARI AND FOR LEAVE TO FILE THE ANNEXED AMENDMENT TO PETITION FOR WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The petitioner, Paul Ginsburg, respectfully moves this Honorable Court pursuant to the authority of *United States of America, Petitioner, v. The Ohio Power Company*, 353 U. S. 98, 1957, to vacate its Order entered herein on January 9, 1961, denying his petition for writ of certiorari; and then to insure full consideration hereof, to enter an Order granting him leave to file the annexed Amendment to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit; and thereupon to grant his petition for writ of certiorari as amended, in the interest of justice.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner

Carlton House, 550 Grant Street,
Pittsburgh 19, Pennsylvania

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

NO. 551

PAUL GINSBURG, Petitioner,

v.

BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, Minors, by their Guardian Ad Litem, BETTY K. GINSBURG, Respondents.

## AMENDMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

Paul Ginsburg, petitioner, hereby makes the following amendment to his Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

The entire Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and all of its contents shall remain as originally filed; and in addition thereto petitioner hereby adds to the ten Reasons Relied On For The Allowance of The Writ therein, the following:

## REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

**XI. The Judgment of the Court of Appeals Granting a Fraudulent Motion to Dismiss, Presented During Pendency of Appellant's Motion Therein for Specific Relief, Deprived Petitioner Discriminatorily of his Right to a Chance as assured by the Evar's Act and the "Judges' Bill".**

As pronounced by the late Mr. Justice Taft, a litigant is entitled to two chances,—one in the District Court and another in the Court of Appeals.

The illegality of the dismissal of the appeal on motion, which is sought to be reviewed herein, is fully established in the Petition (20-23).

That erroneous denial of the right of appeal deprived your petitioner of his right to a first chance on the issues of fraud; and his right to a second chance on the issues of unlawful transfer of the cause, and unlawful adjudication of the rights to the proceeds of the policies of insurance.

Thus it is apparent that the granting of certiorari herein is required to protect and enforce petitioner's rights to the chances of which he has been discriminatorily deprived.

**XII. A Cause of Public Importance Should Be Reviewed Regardless of an Incidental Benefit to a Litigant.**

The public importance of this case is obvious. Petitioner had become the absolute owner, sole beneficiary, premium payer and possessor of the insurance contracts involved herein pursuant to recognized, acceptable, legal written instruments. Under the Consti-

tution and laws of the United States petitioner's rights in those contracts were secure and free from attack. Nevertheless it was attempted to impress the proceeds with an alleged oral trust supposedly created "at the time" when decedent—insured transferred all rights in said insurance contracts to petitioner.

The alleged oral trust was untrue, unproved and unprovable. There was not even an attempt made in the District Court to establish a trust. Under such circumstances, the judgment therein, sought to be reviewed herein, is judicially unsound in the extreme. If that judgment is not reviewed and reversed, then a coast to coast racket could develop which would endanger the citizens' funds, including trusts and estates as well as insurance proceeds. Thus all that a designing conniver need do is obtain the services of an unprofessional attorney who can get a Judge to agree with his preposterous theory. It is respectfully submitted that this Honorable Court will hasten to resolve such conflicts as this dangerous precedent presents.

The review and reversal of the judgments sought to be reviewed would, of course, bestow important benefits upon petitioner, and deservedly so. Those just results, however should not deter the review and reversal which would be of such great importance to the public, because this Honorable Court's adjudications in the past have benefited innumerable citizens with or without benefit to the public.

The petition for writ of certiorari as amended, therefore, should be granted.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner